

1 Stephen M. Doniger (SBN 179314)  
stephen@donigerlawfirm.com  
2 Scott Alan Burroughs (SBN 235718)  
scott@donigerlawfirm.com  
3 Kelsey M. Schultz (SBN 301494)  
kschultz@donigerlawfirm.com  
4 DONIGER / BURROUGHS  
5 603 Rose Avenue  
6 Venice, California 90291  
7 Telephone: (310) 590-1820  
Attorneys for Plaintiff

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 KIM SEYBERT, INC., a New York  
12 Corporation,

13 Plaintiff,

14 vs.

15  
16 LE CROCHET BY SARO, INC.,  
individually and doing business as "Saro  
17 Trading Company," a California  
18 Corporation; and DOES 1 through 10,

19 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:  
1. COPYRIGHT INFRINGEMENT;  
2. VICARIOUS AND/OR  
CONTRIBUTORY COPYRIGHT  
INFRINGEMENT  
3. FOR TRADE DRESS  
INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN,  
AND UNFAIR COMPETITION

Jury Trial Demanded

20  
21 Kim Seybert, Inc., by and through its undersigned attorneys, hereby prays to  
22 this honorable Court for relief based on the following:

23 **JURISDICTION AND VENUE**

24 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §  
25 101 et seq.

26 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331  
27 and 1338 (a).



1 adopted each of the acts or conduct alleged, with full knowledge of all the facts and  
 2 circumstances, including, but not limited to, full knowledge of each violation of  
 3 Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

#### 4 **NATURE OF THE SUIT**

5 9. This case concerns the copyright infringement of Seybert's original  
 6 design, which SARO infringed by reproducing, preparing, and distributing copies  
 7 and/or derivative works of Seybert's copyright design without Seybert's knowledge,  
 8 permission, or authorization. It also concerns trade dress infringement as Defendants  
 9 at all relevant times represented themselves as an authorized seller of Seybert  
 10 products and have used Seybert products with distinct trade dress in advertisements  
 11 for Defendants pirated products and selling products which copy Seybert's trade  
 12 dress. The instant suit seeks to correct SARO's wrongs.

#### 13 **FACTUAL BACKGROUND**

14 10. Kim Seybert, owner of SEYBERT, is a luxury lifestyle designer who has  
 15 dedicated her career to craft-based design, including her unique and celebrated line of  
 16 luxury table décor consisting of placemats, table runners, tablecloths, napkins and  
 17 napkin rings, in addition to other houseware products. For more than twenty (20)  
 18 years, Seybert has enjoyed substantial success in the luxury table décor market  
 19 offering houseware designs created by Kim Seybert and owned in exclusivity by  
 20 Seybert. This broad diversity embodies Kim Seybert's versatility as an artist and  
 21 designer who is comfortable working on private commissions, one-of-a-kind pieces  
 22 for special collaborations, or pieces that are affordable to a wider audience.

23 11. Seybert's original works are featured in popular and influential  
 24 magazines and websites, including Vogue and Architectural Digest. Seybert's  
 25 products are sold in hundreds of points of distribution, including, but not limited to,  
 26 through Seybert's brick and mortar location; its website, <https://kimseybert.com/>; and  
 27  
 28

1 luxury stores Neiman Marcus, Bloomingdales, Geary's, Harrods, Saks Fifth Avenue,  
2 and Bergdorf Goodman.

3 12. Among the original designs created and owned by Seybert are the  
4 following original designs entitled: (1) Confetti Placemat, (2) Vermicelli Placemat,  
5 (3) Bow Tie Runner, (4) Flux Napkin Ring, (5) Super Nova Napkin Ring, (6) Pearl  
6 Burst Napkin Ring, (7) Wood Spider Burst Napkin Ring, (8) Coral Branch Napkin  
7 Ring, (9) Sea Stone Napkin Ring, (10) Pearl Napkin Ring, (11) Constellation Napkin  
8 Ring, (12) Pearl Napkin Ring, (13) Coral Branch Napkin Ring. True and accurate  
9 exemplar(s) of the Subject Designs and corresponding Copyright Registration  
10 Numbers are set forth below.

11 13. Prior to the acts complained of herein, Seybert marketed and sold the  
12 Subject Designs through its authorized third-party distributors and direct to customers  
13 through its website and store.

14 14. Through extensive advertising, promotion, and publicity of the Subject  
15 Designs, Seybert has obtained and holds a trade dress protection in the overall  
16 appearance of the Subject Designs.

17 15. The Subject Designs consist of primarily non-functional trade dress  
18 elements, such as the color combinations used, the shapes and combination thereof,  
19 the textures, the use of traditional beading, the specific combination of shapes within  
20 each Subject Design, among other distinctive attributes. The specific non-functional  
21 elements regarding each Subject Design are identified below in the comparison chart.

22 16. The elements of Seybert's home décor are distinctive and each element  
23 serves to identify Seybert as the source of the Subject Designs. Seybert has made  
24 substantial sales in the United States of the Subject Designs trade dress. Seybert has  
25 spent substantial money and resources to advertise, market, and promote Seybert  
26 trade dress online through media in the United States. As a result of continued and  
27 widespread commercial use and success, as well as advertising, publicity, and  
28

1 promotion, the consuming public has come to recognize the Seybert trade dress,  
2 which is shown in the Subject Designs, and is nonfunctional and distinctive, and to  
3 associate it with a single source, namely, Seybert.

4 17. The Seybert trade dress has acquired secondary meaning and consumers  
5 associate the trade dress exclusively with Seybert home décor. The Subject Designs  
6 trade dress have acquired secondary meaning based on the evidence of intentional  
7 and precise copying by Defendants, Seybert's established place in the home décor  
8 market, the lengthy duration of Seybert's substantial and continuous advertisement,  
9 sale, and manufacturing of the Subject Designs, the Subject Designs prominent  
10 display by various large retailers, magazines, and on social media, and the large  
11 number of sales. Seybert is also frequently recognized as a high-end home décor  
12 brand and has an extremely well-known presence as such.

13 18. The strength and recognition of the Seybert trade dress is evident from  
14 the considerable amount of publicity given to the Seybert products, including online  
15 from various retailers, discussing the quality and uniqueness of Seybert products.

16 19. Seybert has achieved valuable goodwill and secondary meaning in its  
17 Subject Design trade dress.

18 20. SARO is a home goods retailer which sells its products direct to  
19 consumers through its website, <https://www.sarostore.com/>, and through third-party  
20 distributors including Amazon, Overstock, and Wayfair.

21 21. Seybert is informed and believes and thereon alleges that following its  
22 distribution of the Subject Designs, SARO purchased, distributed, advertised, and/or  
23 sold home décor featuring designs which are reproductions of the Subject Designs  
24 (hereinafter the "Offending Products") without Seybert's authorization. True and  
25 accurate exemplar(s) of the Subject Designs alongside the Offending Products with  
26 affiliated URLs are set forth below:



| <b><u>SUBJECT DESIGNS</u></b>  | <b><u>OFFENDING PRODUCTS</u></b>  |
|--|---|
|  <p data-bbox="280 730 776 814">Confetti Placemat<br/>Registration No. VAu 1-259-535</p>      |  <p data-bbox="878 737 1430 821"><a href="https://www.sarostore.com/p-50506-219-beaded-placemat.aspx">https://www.sarostore.com/p-50506-219-beaded-placemat.aspx</a></p>      |
|  <p data-bbox="280 1312 776 1396">Vermicelli Placemat<br/>Registration No. VAu 1-356-603</p> |  <p data-bbox="878 1367 1430 1451"><a href="https://www.sarostore.com/p-51863-9104-beaded-placemat.aspx">https://www.sarostore.com/p-51863-9104-beaded-placemat.aspx</a></p> |

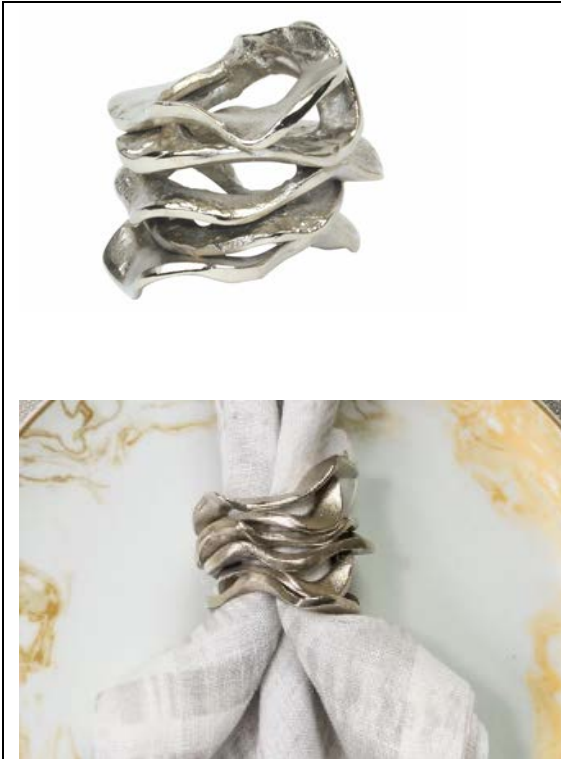


Bow Tie Runner  
Registration No. VAu 1-316-892



<https://www.sarostore.com/p-51680-8142-beaded-christmas-bows-runner.aspx>





Flux Napkin Ring  
Registration No. VAu 2-068-694



<https://www.sarostore.com/p-52324-nr321-wavy-stacked-napkin-ring.aspx>



Super Nova Napkin Ring  
Registration No. VAu 2-068-694



<https://www.sarostore.com/p-52337-nr390-beaded-napkin-ring.aspx>





Pearl Burst Napkin Ring  
Registration No. VAu 2-068-694



[https://www.amazon.com/dp/B076DV2X9X?psc=1&ref=ppx\\_yo2ov\\_dt\\_b\\_product\\_details](https://www.amazon.com/dp/B076DV2X9X?psc=1&ref=ppx_yo2ov_dt_b_product_details)



Wood Spider Burst Napkin Ring  
Registration No. VAu 2-068-694



[https://www.amazon.com/dp/B08KSKBP3V?psc=1&ref=ppx\\_yo2ov\\_dt\\_b\\_product\\_details](https://www.amazon.com/dp/B08KSKBP3V?psc=1&ref=ppx_yo2ov_dt_b_product_details)



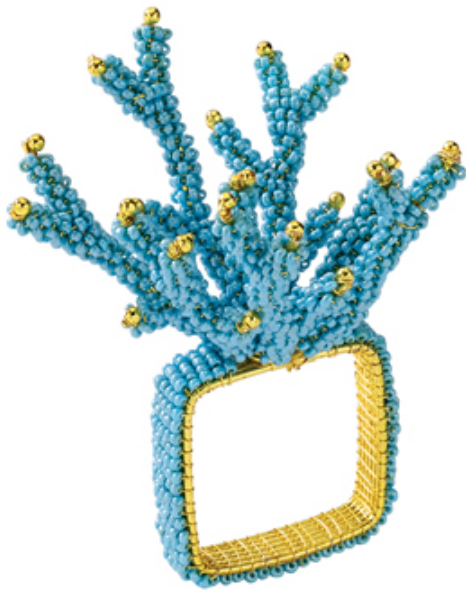
<https://www.amazon.com/SARO-LIFESTYLE-Flower-Design-Napkin/dp/B0>



Constellation Napkin Rings  
Registration No. VAu 2-068-694



<https://www.overstock.com/Home-Garden/Napkin-Rings-With-Beaded-Flower>



Coral Branch Napkin Ring  
Registration No. VAu 2-068-694

Saro "Coral Beaded Napkin Rings"  
<https://www.sarostore.com/p-52306-nr227-beaded-coral-napkin-ring.aspx>



Sea Stone Napkin Ring  
Registration No. VAu 1-332-309



<https://www.wayfair.com/kitchen-tabletop/pdp/saro-stone-cluster-napkin-rings-thjl5473.html>



Pearl Napkin Ring  
Registration No. VAu 2-068-694



<https://www.overstock.com/Home-Garden/Faux-Pearl-Napkin-Ring-Set-of-4/12425546/product.html>

22. Seybert did not manufacture or distribute the Offending Products. Indeed, the Offending Products are of plainly inferior quality, differing size, and include materials that Seybert does not manufacture or distribute.

23. Seybert is informed and thereon alleges that after purchasing the Offending Products from Defendants, Defendants manufactured or caused to be manufactured products infringing Seybert's unique trade dress and Subject Design.

24. Defendants unauthorized use of Seybert's Subject Designs has caused and is likely to continue causing confusion, mistake, and deception as the source or origin of the Offending Products and is likely to falsely suggest sponsorship, connection, or association between Defendants and/or their products.

25. Defendants unauthorized use of Seybert's Subject Design trade dress is likely to cause confusion amongst customers based on the strength and prominence of the trade dress in the home décor market, the nearly identical similarities between the genuine Subject Designs and the Offending Products, the proximity of the products with each other, the similarity of marketing channels used, and the likelihood of expansion. Defendants clearly acted intentionally and precisely in copying the color, size, detail, and shape of the Subject Designs trade dress.

26. Seybert's goodwill among customers is uniquely tied to its Subject Designs and the quality of each. Defendants' copying of Seybert's intellectual property rights not only allows Defendants to trade on the benefits of Seybert's investment, but it also threatens to substantially diminish the goodwill that Seybert has developed with consumers.

## **FIRST CLAIM FOR RELIEF**

(For Copyright Infringement – Against all Defendants, and Each)

27. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.



28. Plaintiff alleges that Defendants, and each of them, accessed the Subject Designs by without limitation, viewing, and/or purchasing the Subject Designs.

29. Plaintiff alleges on information and belief that Defendants, and each of them copied, reproduced, displayed, and distributed the Offending Products to consumers.

30. Plaintiff alleges on information and belief that Defendants, and each of them, infringed Plaintiff's copyrights by creating infringing derivative works from the Subject Designs and distributed same to the public.

31. Due to Defendants', and each of their acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

32. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiff's rights in the Subject Designs. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the Subject Designs in an amount to be established at trial. Plaintiff further alleges that Defendants have committed copyright infringement with actual knowledge or reckless disregard of Plaintiff's rights such that said acts of copyright infringement were, and continue to be, willful, intentional, and malicious.

## **SECOND CLAIM FOR RELIEF**

(For Vicarious and/or Contributory Copyright Infringement – Against all Defendants,  
and Each)

33. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.

34. Plaintiff alleges on information and belief that SARO knowingly induced, participated in, aided and abetted in, and profited from the illegal reproduction and distribution of the Subject Designs as alleged hereinabove. Such conduct included,

1 without limitation, reproducing, creating derivative works, and distributing the  
2 Offending Product for purchase through affiliate and third-party distributors  
3 including Amazon, Overstock, and Wayfair.

4 35.Plaintiff alleges on information and belief that SARO is vicariously liable  
5 for the infringement alleged herein because it had the right and ability to supervise  
6 the production of the Offending Products and because it had a direct financial  
7 interest in the Offending Products.

8 36.By reason of SARO's acts of contributory and vicarious infringement as  
9 alleged above, Plaintiff has suffered general and special damages in an amount to be  
10 established at trial.

11 37.Due to SARO's infringement, it has obtained direct and indirect profits it  
12 would not otherwise have realized but for its infringement of Plaintiff's rights in the  
13 Subject Designs. As such, Plaintiff is entitled to disgorgement of SARO's profits  
14 directly and indirectly attributable to its and its third-party distributors' infringement  
15 of Plaintiff's rights in the Subject Designs in an amount to be established at trial.

16 **THIRD CLAIM FOR RELIEF**

17 (For Trade Dress Infringement, False Designation of Origin, and Unfair Competition  
18 (15 U.S.C. § 1125(a)) – Against all Defendants)

19 38.Plaintiff repeats, re-alleges, and incorporates herein by reference as though  
20 fully set forth, the allegations contained in the preceding paragraphs.

21 39.Defendants advertisements, promotions, offers to sell, sales, distribution,  
22 manufacture, and/or importing of Offending Products, in direct competition with  
23 Plaintiff, constitute common law trade dress infringement, at least because  
24 Defendants use of Plaintiff's trade dress and/or colorable imitations thereof is likely  
25 to cause consumer confusion as to the origin and/or sponsorship affiliation of its  
26 Offending Products, at least by creating the false and misleading impression that its  
27  
28

1 Offending Products are manufactured by, authorized by, or otherwise associated  
2 with Plaintiff.

3 40.Plaintiff's trade dress is entitled to protection under common law. Plaintiff's  
4 trade dress includes unique, distinctive, and non-functional home décor designs.

5 41.Plaintiff has extensively and continuously promoted and used its trade dress  
6 in the United States and New York. Through that extensive and continuous use,  
7 Plaintiff's trade dress has become a well-known indicator of the originality and  
8 quality of Plaintiff's products.

9 42.Plaintiff's trade dress has acquired substantial secondary meaning in the  
10 home décor marketplace. Moreover, Plaintiff's trade dress acquired this secondary  
11 meaning before Defendant's commenced its unlawful use of Plaintiff's trade dress in  
12 connection with its Offending Products.

13 43.Defendants have misappropriated several of Plaintiff's home décor trade  
14 dress designs by copying several elements of the Subject Designs trade dress.

15 44.Defendant's manufacture, promotion, and distribution of Offending  
16 Products containing elements that copies a combination of several elements of the  
17 Plaintiff's Subject Design trade dress is likely to cause confusion or mistake, or to  
18 deceive consumers as to the affiliation, connection, or association of Offending  
19 Products with the Seybert brand, or to the origin, sponsorship, or approval by  
20 Seybert of the Offending Products.

21 45.Defendants use of the Subject Designs trade dress without authorization is  
22 in furtherance of their willful, deliberate, and bad faith scheme to trade upon the  
23 extensive consumer goodwill and recognition Seybert has established in the trade  
24 dress, and sow consumer confusion between the parties and their products.

25 46.Defendant's use of Plaintiff's trade dress and/or colorable imitations thereof  
26 has caused and, unless enjoined, will continue to cause substantial and irreparable  
27

injury to the goodwill and reputation for quality associated with Plaintiff's trade dress, Plaintiff's products, and Plaintiff.

47. Defendant's manufacture, promotion and distribution of the Offending Products that copy a combination of several elements of the Subject Designs trade dress enables Defendants to benefit unfairly from Plaintiff's reputation and success.

48. Defendants' use of the Subject Designs trade dress without authorization from Seybert is likely to dilute the distinctive quality of the Seybert trade dress, decrease the capacity of that trade dress to identify and distinguish Seybert products and to cause harm to Seybert's business reputation. Defendants' acts complained of herein constitute trade dress dilution in violation of 15 U.S.C. § 1125(c).

49. Defendants use of Plaintiff's trade dress and/or colorable imitations thereof has been intentional, willful and malicious. Defendant's bad faith is evidenced, at least, by Defendants direct copying of several Seybert products and continued disregard for Seybert's rights.

50. Defendants have made and will continue to make, substantial profits and gain from their use of the Subject Design trade dress in the United States, to which they are not entitled in law or equity.

51. Plaintiff is entitled to injunctive relief and recovery of Plaintiff's actual damages, Defendant's profits, punitive damages, costs, and reasonable attorney's fees.

### **PRAYER FOR RELIEF**

52. Wherefore, Plaintiff prays for judgment as follows:

- a. That Defendants—each of them—and their respective agents and servants be enjoined from importing, manufacturing, distributing, offering for sale, selling, or otherwise trafficking in any product that infringes Plaintiff's copyrights in Subject Designs;

- 1           b. An order preliminarily and permanently enjoining Defendants and  
2           their officers, agents, affiliates, employees, and attorneys and all  
3           those persons acting or attempting to act in concert or participation  
4           with them, from: using any design similarly or likely to cause  
5           confusion with the Subject Designs; using any false designation of  
6           origin or false description, including the appearance of its product,  
7           that can, or is likely to, lead the consuming public, or individual  
8           members thereof, to believe that any goods produced, advertised,  
9           promoted, marketed, provided, or sold by Defendants are in any  
10          manner associated or connected with SEYBERT, or are advertised,  
11          promoted, marketed, sold, licensed, sponsored, approved, or  
12          authorized by SEYBERT; committing any other unfair business  
13          practices directed toward or obtaining for themselves the business  
14          and customers of SEYBERT; and committing any other unfair  
15          business practices directed toward devaluing or diminishing  
16          SEYBERT's brand or business;
- 17          c. That Plaintiff be awarded all profits of Defendants, and each of them,  
18          plus all losses of Plaintiff, the exact sum to be proven at the time of  
19          trial, or, if elected before final judgment, statutory damages as  
20          available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- 21          d. That Plaintiff be awarded its attorneys' fees as available under the  
22          Copyright Act U.S.C. § 101 et seq.;
- 23          e. That Plaintiff be awarded all profits of Defendants, and each of them,  
24          plus all losses of Plaintiff, plus any other monetary advantage gained  
25          by the Defendants, through their infringement, the exact sum to be  
26          proven at the time of trial as available under 17 U.S.C. § 504, 15  
27          U.S.C. § 1117, and any other applicable law;
- 28



- 1 f. Reasonable funds for corrective advertising;  
2 g. That Plaintiff be awarded pre-judgment interest as allowed by law;  
3 h. That Plaintiff be awarded the costs of this action; and  
4 i. That Plaintiff be awarded such further legal and equitable relief as the  
5 Court deems proper.

6 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.  
7 38 and the 7th Amendment to the United States Constitution.

8  
9 Respectfully,

10 Dated: September 6, 2023

11 By: /s/ Scott Alan Burroughs  
12 Scott Alan Burroughs, Esq.  
13 Kelsey M. Schultz, Esq.  
14 DONIGER / BURROUGHS  
15 Attorneys for Plaintiff  
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